(17,580.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 466.

C. G. BLAKE AND ROGERS, BROWN & COMPANY, PLAINTIFFS IN ERROR,

vs.

CALVIN M. McCLUNG, WILLIAM P. SMITH, WILLIAM B. KEENER, FRANKLIN H. McCLUNG, JR., AND CHARLES J. McCLUNG, JR., PARTNERS AS C. M. McCLUNG & COMPANY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1899.

1 *Mandate.*

UNITED STATES OF AMERICA, *88:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Tennessee, [SEAL.] Greeting:

Whereas lately, in the supreme court of the State of Tennessee, before you or some of you, in a cause between C. G. Blake, Rogers, Brown & Co., Hull Coal & Coke Company, Julian Kennedy, and Clark & Reid, trustees, appellants, and Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Charles J. McClung, Jr., partners as C. M. McClung & Company, *et al.*, appellees, wherein the judgment of the said supreme court entered in said cause on the 15th day of November, A. D. 1895, is in the following words, viz:

"This cause came on to be heard on this Nov. 15, 1895, before the hon. the supreme court of Tennessee upon the transcript of the record of the chancery court at Jonesboro and the court of chancery appeals at Knoxville and upon the appeal of Clark & Reid, trustees; Rogers, Brown & Co, Hull Coal & Coke Co., Julian Kennedy, and C. G. Blake from the decree of the court of chancery appeals and upon the writs of error of Rogers, Brown & Co., the Hull Coal & Coke Co., and C. G. Blake to the chancery court at Washington Co., Tennessee, and the motion to dismiss said writ of error, which motion is overruled and disallowed, and upon the written opinion and findings of facts of the chancery court of appeals and the assignments of error thereto by the appellants, and the answer of the appellees to said assignments of error, and upon consideration the court is of opinion that there is no error of the court of chancery appeals and doth accordingly order, adjudge, and decree that said decree be, and the same is, accordingly confirmed.

It is therefore decreed by the court as follows:

1. That the defendants Clark & Reid took and held the
2 naked legal titles to the lands in question in trust for the Embreeville Freehold Land, Iron & Railway Co (Limited), under the deed from James Gordon Miller dated Jan'y 16, 1890, as a mere naked, dry trust, and that there was no parol or other agreements either before or at the time that they should hold the legal title to said lands in trust for the debenture-holders or any of them, and that the said debenture-holders have no lien upon the said lands for the security of the debentures so held by them.

2nd. That the trust deeds executed to secure the debenture bonds issued by the company were not registered until after this insolvent proceeding was instituted, and that said trust deeds constitute no security and did not give the owners of the debenture bonds any right and priority of payment over the other creditors of the Embreeville Freehold Land, Iron & Railway Co. out of the proceeds of said lands which were sold in this cause.

That the act of the General Assembly of Tennessee passed M'ch

19; 1877, and approved March 21, 1877, chapter 31st, entitled "An act to declare the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business and purchase, hold, and conver real and personal property in this State," is in all respects a valid *inactment* and is not in contravention of paragraph 2, article IV or article 14, amendments to the Constitution of the U. S., nor in contravention of any other provision of the Constitution of the U. S., and the court further finds that said court of chancery appeals erred in determining that the question of the *of the* construction of the said act was not properly presented to said court under the general appeals prosecuted therein, and that portion of the said findings of the court of chancery appeals is reversed.

3rd. That all of the holders and owners of the debenture bonds of the Co. are simple contract creditors of said Co. and stand upon the same footing with reference to the distribution of the assets of the Co. as all of its other creditors who reside out of the State
3 of Tennessee, whether they be residents of other States or of the Kingdom of Great Britain.

4th. That all of the creditors of the Embreeville Freehold Land, Iron & Railway Co. (Limited) who resided in the State of Tennessee are entitled to priority of payment out of all of the assets of said Co., both real and personal, over all of the other creditors of said Co. who do not reside in the State of Tennessee, whether they be residents of other States of the U. S. or of the Kingdom of Great Britain; that all of the creditors of the Embreeville Freehold Land, Iron & Railway Co. who reside out of the State of Tennessee, whether they reside in the other States of the U. S. or in the Kingdom of Great Britain, have the right and must share equally and ratably in the distribution of said funds of the said company after the residents of the State of Tennessee shall have been first paid in full.

5th. That Clark & Reid, trustees, are not entitled to compensation for their services or to have their solicitors' fees for their services in this cause paid out of the proceeds of the property of the Embreeville Freehold Land, Iron & Railway Co. (Limited), but may have same out of funds coming to debenture-holders.

6th. That the relative priorities of the original debenture-holders and the so-called prior lien of the debenture-holders is left open for settlement by them or their trustees or to the adjudication by the chancellor.

7th. That this cause be remanded to the chancery court at Jonesboro for further proceedings, in accordance with this decree and the decree of the court of chancery appeals, and that all of the costs of the cause shall be paid out of the funds in court.

8th. That on application of Messrs. Ingersoll & Peyton, Chas. Seymour & S. C. Williams, solicitors for various petitioners, liens are declared on the sums which shall be due their several clients under this decree for reasonable fees for their services in this cause. It is further decreed that a reasonable fee shall be paid to Green & Shields and Deadrick & Epps, the solicitors filing this general cred-

itors' bill, out of the funds in court, for their services in filing
4 the bills and prosecuting this insolvent proceeding, and the same shall be taxed as part of the costs of this cause.

A reference as to what would be a reasonable fee for their said services may be had in the chancery court at Jonesboro.

Judge McAlister, being incompetent by *relation* of relationship to one of the parties, did not participate in the hearing and decision of this cause."

As by the inspection of the transcript of the record of the said supreme court, which was brought into the Supreme Court of the United States by virtue of a writ of error sued out by C. G. Blake, Rogers, Brown & Co., and the Hull Coal & Coke Co., agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and ninety-eight, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause as to the Hull Coal & Coke Company be, and the same is hereby, affirmed with costs, and as to the other plaintiffs in error be, and the same is hereby, reversed with costs, and that the said C. G. Blake and Rogers, Brown & Co. recover against the said appellees, Calvin M. McClung *et al.*, partners as C. M. McClung & Company, *et al.*, four hundred and sixty dollars and sixty cents for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said supreme court for further proceedings not inconsistent with the opinion of this court.

December 12, 1898.

5 And the same is hereby remanded to you, the said judges of the said supreme court of the State of Tennessee, in order that such execution and further proceedings may be had in the said cause, in conformity with the judgment and decree of this court above stated, as according to right and justice and the Constitution and laws of the United States ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

Costs of Blake & Rogers, Brown & Co. ($\frac{2}{3}$ of total):

Clerk	$403 66
Printing record	57 00
	$460 66

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Supreme Court of the United States. No 6, October term, 1898. C. G. Blake, Rogers, Brown & Co., *et al. vs.* Calvin M. McClung *et al.* Filed April 28th, 1899. J. G. Stuart, deputy clerk. Mandate.

6 *Motion for Judgment on Mandate.*

C. M. McClung & Company et al.
vs.
Embreeville Freehold Land, Iron — Railway Company (Limited) *et al.*

C. G. Blake and Rogers, Brown & Company, by their solicitor, move the court for decrees in their favor under the mandate and opinion in Blake *vs.* McClung, 172 U. S., 239, the form of decree suggested being set out in the memorandum brief herewith submitted.

TULLY R. CORNICK, *Sol.*

Filed September 20th, 1899.
J. G. STUART, *D. C.*

7 Transcript of opinion and decree on mandate of the United States Supreme Court in case of C. M. McClung *et al. vs.* Embreeville Freehold, Land, Iron & Railway Company, Limited, *et als.*

C. M. McClung & Company
vs.
The Embreeville Freehold, Land, Iron & Railway Co.

Opinion.

This case, as presented now, involves alone a controversy between adversary counsel, with regard to the nature of the decree which should be entered under the mandate of the Supreme Court of the United States.

The Embreeville Freehold, Land, Iron & Railway Company, (Lmtd.), a corporation organized under the laws of Great Britain and Ireland for mining and manufacturing purposes, after registering its charter in this State, as required by chapter 31 of the Acts of 1877, began business, which in a few years ended in insolvency. In 1893 the present complainants filed the bill in this cause as a general creditors' bill, for the purpose of winding up the insolvent corporation. Among its creditors were citizens of the State of Tennessee, citizens of other States of the United States, and citizens of Great Britain and Ireland. The cause was regularly conducted as an insolvent proceeding until, the case having reached this court, a final decree was pronounced, in which, among other things, it was adjudged, that

8 under the 5th section of the act already referred to, Tennessee creditors had a priority in the distribution of the assets of this corporation over simple contract creditors of all other countries. The effect of this decree was to place creditors, whether citizens of other States of the United States or citizens of foreign

countries, upon the same footing, and to postpone all alike until the Tennessee creditors were fully satisfied. Among the creditors affected by this decree were C. G. Blake, and Rogers, Brown & Company, citizens of the State of Ohio, and the Hull Coal and Coke Company, a corporation of Virginia, who were of the class of simple contract creditors of this insolvent corporation. Being dissatisfied with this decree, these parties sued out a writ of error from the Supreme Court of the United States. Upon a hearing in that court, it was held, reversing the decree of this court, that the 5th section of the act of 1877, in so far as it gave priority to home creditors over creditors of the same class of other States of the Union, was in violation of the 2d section of the fourth article of the Constitution of the United States, which provides that "the citizens of each State shall be entitled to all privileges and immunities in the several States;" but it is also held that a corporation, created under the laws of another State of the United States was not a "citizen" within the meaning of this clause of the Constitution. The result was that a judgment was entered affirming the judgment of this court as to the Hull Coal & Coke Company, and reversing it as to C. G. Blake, and Rogers, Brown & Co., and remanding the cause for further proceedings not inconsistent with the opinion delivered in that court. This opinion is reported in vol. 172, p. 239 of United States Supreme Court Reports. The respective counsel of Blake, and Rogers, Brown & Company, and of the Tennessee creditors and alien creditors of this corporation, differ radically in their construction of the opinion and mandate.

9 The contention for the first-named creditors is that the judgment of the Supreme Court of the United States places them in the same class with the Tennessee creditors, and that, with the latter, they are entitled to full satisfaction of their claims before the Hull Coal & Coke Company and the foreign creditors are let in to share in the distribution of the assets of this corporation. On the other hand, the contention of the Tennessee and foreign creditors is that the mandate of that court is fully satisfied when these Ohio creditors are permitted to participate as general creditors in this distribution, without priority over any one, and that when they have received their *pro rata*, on the basis of all creditors being included, then they shall stand aside and the Tennessee creditors, taking under the act of 1877, are to be satisfied, and when this is done, then the Hull Coal & Coke Co. and the foreign creditors can take *pro rata* of the balance of the assets, if any.

Under this contention, the claims of all creditors, without regard to this statutory preference, are to be tabulated for the purpose of ascertaining the *pro rata* to be paid to each, and when so ascertained, and the shares of these Ohio creditors are paid to them, the whole of the balance of the assets of the corporation must be applied, if need be, to the extinguishment of the Tennessee claims, and thereafter as already indicated.

The insistence of the Ohio creditors is rested upon the opinion of that court, the gist of which is found in the following paragraph:

"We adjudge that when the general property and assets of a private corporation, lawfully doing business in a State, are in course of administration by the courts of such State, creditors who are citizens of other States are entitled, under the constitution of the States, to stand upon the same plane with creditors of like class who are citizens of such State, and cannot be denied equality
10 of right simply because they do not reside in that State but are citizens residing in other States of the Union. The individual plaintiffs in error were entitled to contract with this British corporation, lawfully doing business in Tennessee, and deemed and taken to be corporations of that State; and no rule in the distribution of its assets among creditors could be applied to them as resident citizens of Ohio, and because they were not citizens of Tennessee, that was not applied by the courts of Tennessee to creditors of like character who were citizens of Tennessee."

It is contended by these creditors that in this paragraph the court, in express terms, announced the rule of equality between themselves and the Tennessee creditors, and that this equality can only be secured by giving them the same preference in distribution which the latter creditors have secured to them under the statute.

On the other hand, the creditors, citizens of Tennessee, the foreign creditors as well as the Hull, Coal & Cook Co., insist that the Supreme Court of the United States, by its opinion, has expressly recognized the 5th section of the act of 1877 as within the constitutional power of the legislature of the State, save as it sought to place in an inferior and subordinate class creditors who were citizens of other States of this Union, and that by the express terms of that act the home creditors are preferred, and that to give these Ohio creditors the same preference would be to do so when not only they are not named in the act, but when they have successfully impeached, as unconstitutional, that part of it which refers to the class of creditors to which they belong.

It is further insisted by them that the Supreme Court of the United States did not, by its mandate, intend to direct this court to interpolate the act of 1877 with a provision giving preference to creditors who had repudiated it, but that its mandate is fully complied with when this court, in favor of the Ohio creditors, directs an administration of the assets of this insolvent corporation
11 so as to give them full and proportionate shares, as if this act was not in existence; and that having thus done equity in their favor, the 5th section of this act immediately becomes operative, under the terms of which complainants, as preferred creditors, work out a satisfaction of their claims.

A majority of the court adopt this latter view, believing it to be a sound construction of the mandate; and a decree will be entered in accordance with it.

In this view, I do not concur.

While it is possible the Supreme Court of the United States did not have in mind this phase of the question, yet I think in its opinion there is laid down in general, but clear and unmistakable,

terms, a rule under which the Ohio creditors are entitled to what they now claim. That court has said that, so far as they were concerned, the fifth section of the act was void because violative of that clause of the Federal Constitution which provides, "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and the case has been remanded to this court with direction that we see no advantage accrues to home creditors over the Ohio creditors. It is evident that, administering the assets as it is now adjudged shall be done, a valuable "privilege" is secured to the Tennessee creditors of which the Ohio creditors are deprived.

I think this is in the face of the opinion and mandate.

BEARD, *J.*

12 *Decree of Supreme Court.*

Supreme Court of Tennessee, at Knoxville, September Term, 1899.

TUESDAY, *September* 19, 1899.

Court met pursuant to adjournment.

Present and presiding: The Honorable Chief Justice D. L. Snodgrass and the Honorable Associate Justices W. C. Caldwell, Jno. S. Wilkes, and W. D. Beard.

The minutes of yesterday were read and signed, when the following proceedings were had, to wit:

MONDAY, *October 9th*, 1899.

Court met pursuant to adjournment, &c.

C. M. MCCLUNG ET ALS.
vs.
EMBREEVILLE FREEHOLD, LAND, IRON & RAILWAY CO., LTD., *et als.*

This cause was heard on the motion of C. G. Blake and Rogers, Brown & Company, for the entry of judgment and decree pursuant to the opinion and mandate of the Supreme Court of the United States, pronounced in the cause, lately pending in said court, entitled C. G. Blake *v.* C. M. McClung *et als.*, under the writ of error sued out to the said Supreme Court of the United States from this court, from the final judgment and decree of this court, as pronounced on the 15th day of November, 1895, and upon the transcript of the record and former decree of this court. And argument of counsel for all of the several parties in interest having been heard, it is, upon due consideration of all the several questions involved, ordered, adjudged, and decreed by this court, as follows:

1. That the effect and purpose of the opinion and mandate of the Supreme Court of the United States in respect to the rights of C. G. Blake and Rogers, Brown & Company, is to adjudge and decree that the said C. G. Blake and Rogers, Brown & Company are entitled to participate in the assets of the said Embreeville Freehold, Land, Iron & Railway Co., Ltd., upon the basis of a broad distribution of

the assets of said corporation among all of its creditors, without
13 preference or priority, as though the act of 1877, chap. 31, had not been passed; and it is ordered that there be made a computation of the aggregate indebtedness due from the said insolvent corporation to its creditors of every class, wherever residing, and that there shall be paid to the said C. G. Blake, and the said Rogers, Brown & Company, the percentage and proportion which is found to be due to them as creditors of said corporation in the aggregate of assets thus ascertained.

2. It is further adjudged and decreed, that after thus setting apart to the said C. G. Blake, and Rogers, Brown & Company the proportion and percentage thus found to be due to them, that all the rest and residue of the estate of the said Embreeville Freehold, Land, Iron, and Railway Company, Limited, is applicable first to the payment of the indebtedness due to the creditors of said corporation residing within the State of Tennessee, as provided in section 5 of chapter 31 of the Acts of Tennessee, 1877, and that the residue of said estate, if any, shall then be applied *pro rata* to the payment of the debts of the alien and non-resident creditors of said corporation, other than the said C. G. Blake, and Rogers, Brown & Company.

3. It is further adjudged that the said C. G. Blake, and Rogers, Brown & Company, have and recover of the defendants, on the writ of error sued out to the Supreme Court of the United States, C. M. McClung *et als.*, the sum of seven hundred and thirty-three and $\frac{88}{100}$ ($733.88) dollars, and of the said Hull Coal & Coke Co., the sum of two hundred and forty-one and $\frac{87}{100}$, ($241.87) dollars, being the costs expended in the prosecution of the writs of error to the Supreme Court of the United States, subject, nevertheless, to a credit of one hundred and twenty-five ($125.00) dollars, in favor of
14 said Hull Coal & Coke Company, which said sum it is admitted the said last-named company contributed to the payment of the costs incurred in said Supreme Court, under the prosecution of said writs of error; and for these sums executions are awarded.

This cause will be remanded to the chancery court of Washington county for the collection and distribution of the fund now in said court, and for the making of such further orders as may be found necessary to the final settlement of the cause.

4. On the hearing of this cause the said C. G. Blake, and Rogers, Brown & Company, by their counsel, except to the action of the court in determining that creditors residing in Tennessee are entitled, under the act of 1877, chap. 31, sec. 5, to any priority or preference, by way of increased percentages in distribution, over the said C. G. Blake, and Rogers, Brown & Company, upon the ground that such priority and preference is in violation of section 2 of article 4 of the Constitution of the United States, and is not consistent with the opinion pronounced, and the mandate issued from the Supreme Court of the United States under the writ of error sued out herein, and above referred to.

15 In the Supreme Court of Tennessee.

C. M. McClung & Company et al.
vs.
Embreeville Freehold, Land, Iron & Railway Company (Limited) *et al.*

Assignments of Error.

Charles G. Blake and Rogers, Brown & Company, by their solicitors, feeling themselves to be aggrieved by the findings and decree of the supreme court of Tennessee in the above entitled cause, made and entered in said court on October 9th, 1899, assign error thereto as follows, to wit:

I.

That the decree of the supreme court and the opinion of said court upon which said decree of October 9th, 1899, is based are not consistent with the opinion and mandate of the Supreme Court of the United States under the writ of error sued out to said court, decision whereunder was rendered by said Supreme Court of the United States as reported in Blake *vs.* McClung, 172 U. S., pp. 239 *et seq.*

II.

That in and by the opinion of the Supreme Court of the United States and the mandate issued thereunder in said case of Blake *vs.* McClung, it was declared that—

"No rule of distribution of its assets (meaning thereby the assets of the defendant The Embreeville Freehold, Land, Iron & Railway Company (Limited), among creditors, could be applied to them (the appellants herein) as resident citizens of Ohio, and because they were not citizens of Tennessee, that was not applied by the courts of Tennessee to creditors of like character who were citizens of Tennessee."

And it is assigned as error that under the decree of October 9th, 1899, a broad distribution is declared in favor of the appellants herein, and that after such distribution has been made the balance of the estate belonging to said debtor to the extent that the same shall be necessary is adjudged to be applied to the payment
16 in full of the demands of Tennessee creditors and to the exclusion of appellants.

III.

That the basis of distribution decreed by the supreme court of Tennessee in favor of citizens of Tennessee under said decree of October 9th, 1899, gives preference to citizens of Tennessee inconsistent with and in contravention of section 2, clause 1, article 4, of the Constitution of the United States, and that such decree is in contravention of and is repugnant to the said provisions of the said Constitution of the United States.

IV.

That the court erred in entering the decree of October 9th, 1899, in favor of the creditors residing within the State of Tennessee, over the objection and exception of the plaintiffs in error.

Wherefore these appellants pray that for the errors assigned said findings and decree may be reversed.

CHARLES G. BLAKE,
ROGERS, BROWN & COMPANY,
By TULLY R. CORNICK, *Sol.*

HEBER J. MAY,
TULLY R. CORNICK, *Solicitors.*

Filed November 18th, 1899. ALEX. McMILLAN, *Clerk.*

17 *Bond for Writ of Error.*

Filed Nov. 18, 1899. Alex. McMillan, Clerk.

Supreme Court of Tennessee.

C. M. McCLUNG & COMPANY ET AL.
vs.
EMBREEVILLE FREEHOLD, LAND, IRON & RAILWAY COMPANY (Limited) *et al.*

Know all men by these presents that we, Chas. G. Blake and Rogers, Brown & Company, as principals, and Tully R. Cornick, as surety, are held and firmly bound unto C. M. McClung & Company and others in the penal sum of one thousand ($1,000.00) dollars, to be paid to the said C. M. McClung & Company and others, their heirs and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, and each and every of our several heirs, executors, and administrators, jointly and severally, by these presents.

Witness our hands and seals on this *on this* 18 day of November, A. D. 1899.

Whereas the above-named Charles G. Blake and Rogers, Brown & Company have prosecuted a writ of error to the United States Supreme Court, to be holden at Washington, to reverse the decree rendered in the above-entitled suit in said court by the judges of the supreme court of Tennessee;

Now, therefore, the condition of this obligation is such that if the above-named C. G. Blake and Rogers, Brown & Company shall prosecute said writ of error to effect and answer all damages and costs if they fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. G. BLAKE, [SEAL.]
By TULLY R. CORNICK, *Att'y.*
ROGERS, BROWN & COMPANY, [SEAL.]
By TULLY R. CORNICK, *Att'y.*
TULLY R. CORNICK. [SEAL.]

Approved:
D. L. SNODGRASS,
Chief Justice Supreme Court of Tennessee.

18 Circuit Court of the United States, Eastern District of Tennessee, Northern Division.

The President of the United States of America to the honorable the judges of the supreme court of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Tennessee, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between C. M. McClung & Co. *et al.* and the Embreeville Freehold, Land, Iron & Railway Company *et al.*, a manifest error hath happened, to the great damage of Charles G. Blake and Rogers, Brown & Company, a firm composed of Wm. A. Rogers, Archer Brown, Daniel B. Meacham, M. Cochran Armour, and William C. Herron, all citizens of the State of Ohio and parties to and interested in said cause, wherein was drawn in question the validity of a statute of or an authority exercised under the laws of said State as being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity;

And because it further appears that under the mandate of the Supreme Court of the United States issued in the cause lately pending in said court entitled C. G. Blake and others, plaintiffs in error, *vs.* Calvin M. McClung and others, defendants in error, it was ordered that further proceedings be had in said cause not inconsistent with the opinion of the said Supreme Court of the United States pronounced therein;

And because manifest error hath happened in the rendition of said judgment and decree, to the great damage of the said C. G. Blake and Rogers, Brown & Company, as by their complaint appears, we, being willing that that error, if any hath been,

19 should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 1st Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of November, in the year of our Lord one thousand eight hundred and ninety-nine (1899).

[The Seal of the Circuit Court, District of East Tenn.]

HENRY O. EWING, *Clerk*,
By J. T. CARTER,
Dep. Clerk United States Circuit Court,
Eastern District of Tenn.

Allowed by—
D. L. SNODGRASS, *Ch. J. Sup. Ct. Tenn.*

A true copy of the above and foregoing writ of error was lodged with me in the office of the clerk of the supreme court of Tennessee, at Knoxville, on November 18th, 1899, at 2.30 o'clock p. m.

ALEX. McMILLAN,
Clerk of Supreme Court of Tenn.

Fee for this writ, $1.00. Paid by T. R. Cornick, Esq., Nov. 18, 1899.

J. T. CARTER, *Dep. Clerk.*

20 *Citations.*

United States of America to—

Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Chas. J. McClung, Jr., partners in trade as C. M. McClung & Company;

James D. Cowan, Charles J. McClung, Matthew McClung, Jacob L. Thomas, and Robert M. Rhea, partners in trade as Cowan, McClung & Company;

William B. Lockett, A. Percy Lockett, and Edward Lockett, partners in trade as W. B. Lockett and Company;

Rush S. Hazen and J. Orville Lotspeich, partners in trade as Hazen & Lotspeich;

The Knoxville Provision and Sugar Company, a corporation under the laws of Tennessee;

Samuel Spencer, receiver of the East Tennessee, Virginia and Georgia Railway Company;

Ogden Brothers & Company, a corporation under the laws of Tennessee;

C. R. Love, doing business as C. R. Love & Company;

Daniel M. Haynes & Tilman W. Haynes, partners in trade as Haynes Brothers;

Samuel P. Evans, receiver of the Pioneer Coal & Coke Company, a corporation under the laws of Tennessee;

R. N. Dosser, A. T. Dosser, and F. F. Dosser, partners in trade under the firm name of Dosser Brothers;

J. H. Jones, assignee of the late firm of Garber Brothers;

Jno. N. Blair, doing business under the firm name of Blair Brothers;

The Dent Mining Company, a corporation, of which H. C. Dent is manager;

Jno. Isaac Cox, receiver of the First National Bank of Johnson City, a banking corporation, etc.;

The Jonesboro Banking & Trust Company, a corporation, etc.;

H. C. Jackson, Eliza C. Murphy, Mary C. Carter, Addie J. Fuller and her husband, C. L. Fuller; Mollie Yonce and her husband, Colain Yonce; Ollie McDade and her husband, R. S. McDade; Ida Jones and her husband, L. O. Jones; Mattie Wilson and
21 her husband, Joseph Wilson; Lillie Smyth and her husband, T. S. Smyth, and Matt Jackson (all of Tennessee); Lillie J. Rogan and her husband, James W. Rogan, of Maryland; Charles B. Jackson, of Kansas; Sallie Glen and her husband, D. A. Glen, of North Carolina (tenants in common, etc.); Isaac E. Reeves, receiver of J. J. Hunt & Company;

Charles K. Lide, C. F. Decker, T. J. Brown, —— Biddle, and —— Ellsworth, partners in trade as Biddle & Ellsworth;.
Sweetwater Mill Company, a corporation, etc.;
C. L. Rogers, assignee of O'Connell & Rogers;
Sterling Dynamite Company, a corporation under the laws of Tennessee;
Montague & Company, a corporation under the laws of Tenn.;
R. H. Dungan, J. P. White, Robert W. Blair, —— Lingenfelter, and —— Krichbaum, partners in trade as Lingenfelter and Krichbaum;
W. L. Martin, W. E. Bullock, L. W. McKensie, A. L. Estil;
John Epps, assignee A. R. Wing;
Greer Machinery Company, a corporation under the laws of Tennessee;
Buckeye Coke Company, a corporation under the laws of Tenn.;
H. Victor Hart, James E. Deakins;
Johnson City Foundry & Machine Co., a corporation, etc.;
Hugh H. Kirkpatrick,
William J. Love,
The above being Tennessee creditors;
Covington Machine Works, a corporation under the laws of Virginia;
The Fairbanks Company, a corporation under the laws of New Jersey, Baltimore, Md.;
Queen & Company, a commercial house of Phila., Pa.;
Elmer & Amend, a commercial house of New York city;
American Bridge & Iron Works, a corporation under the laws of Virginia, Roanoke, Va.;
Williamsport Wire Works, a corporation under the laws of
22 Pennsylvania, Williamsport, Pa.;
Wilson Snyder Mfg. Co., a Pennsylvania corporation, of Pittsburgh, Pa.;
A. S. Cameron Steam Pump Company, a New York corporation, of New York city;
Nathan Mfg. Company, a New York corporation, of New York city;
Julian Kennedy, residing at Pittsburgh, Pa.;

And the following persons, firms, and corporations residing in the United Kingdom of Great Britain and Ireland:

Jno. Morris, Frank Crisp, and William Morris, partners, composing the firm of Ashurst, Morris, Crisp & Company;
Frank Crisp, as an individual;
Edward Ardley, doing business as Ardley & Company;
Chas. H. Bright and Chas. H. Cox, partners under the firm name of Bates, Hendy and Company;
Frederick C. Mathieson, Frederick C. Mathieson and James F. Mathieson, partners as F. C. Mathieson & Sons;
William A. Stone, William Cash, and Herbert a Plumb, partners under the firm name of Cash, Stone and Plumb;
Bradbury, Wilkinson and Company, a corporation;
United Kingdom and Foreign Investment Co., a corporation;

Union Mortgage Co., a corporation;
The Commercial Bank of Scotland, a corporation;
London Real Estate Company, a corporation;
London Trust Company, a corporation;
Lord Hampden,
Rev. Hugh Flemming,
Thos. Reid,
Sir Andrew Clark,
W. C. Prescott,
Lord Cloncurry,
Ernest S. Inman,
P. McFayden,
J. Campbell Dick,
Alfred Bull,
23 George W. Lakeman,
W. J. Brooks,
F. Denton,
Miss E. H. Robins,
W. Alcock,
Sir Andrew Clark and Thomas Reid, trustees, and The Embreeville Freehold, Land, Iron & Railway Company, Limited, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Tennessee, wherein Charles G. Blake and Rogers, Brown & Company are plaintiffs in error and you are defendant- in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David L. Snodgrass, chief justice of the supreme court of Tennessee, this 18 day of November, in the year of our Lord eighteen hundred and ninety-nine (1899).

D. L. SNODGRASS,
Ch. J. Sup. Ct. Tenn.

We hereby acknowledge service of the within and foregoing citation for and in behalf of all of the parties named therein this Nov. 18, 1899.

GREEN & SHIELDS, *Sols.*
S. C. WILLIAMS.
LEON JAUROLMON.
HENRY H. INGERSOLL.

24 *Certificate.*

Office of the clerk of the supreme court for the eastern division of the State of Tennessee.

I, Alex. McMillan, clerk of said court, do hereby certify that the foregoing is a true, perfect, and complete copy of the opinion and decree of the supreme court since the remand from the United States Supreme Court pronounced at its September term, 1899, and also a true and correct copy of the assignments of error, bond for writ of error, writ of error, and citations in the case of C. M. McClung & Company *et al. vs.* Embreeville Freehold, Land, Iron & Railway Co. (Limited) *et al.* as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in Knoxville, Tenn., on this the 20th day of November, 1899.

[Seal of the Supreme Court, Knoxville, Tenn.]

ALEX. McMILLAN, *Clerk*,
By —— ——, *D. C.*

STATE OF TENNESSEE:

I, D. L. Snodgrass, chief justice of the supreme court of Tennessee, do hereby certify that the foregoing attestation is in due form and by the proper officer.

Given under my hand this 20th day of November, 1899.

D. L. SNODGRASS,
Chief Justice Supreme Court of Tennessee

Fee for this transcript, $9.55.
Paid by T. R. Cornick, Esq., Nov. 20, 1899.

J. G. STUART, *Dep. Clerk.*

Endorsed on cover: File No., 17,580. Tennessee supreme court. Term No., 466. C. G. Blake and Rogers, Brown & Company, plaintiffs in error, *vs.* Calvin M. McClung, William P. Smith, William B. Keener, Franklin H. McClung, Jr., and Charles J. McClung, Jr., partners as C. M. McClung & Company, *et al.* Filed December 4, 1899.